April 5, 2001

D.T.E. 00-22-12-A

Sprint Communications Company, LP, Motion for Reconsideration of Order, or in the alternative, Motion for Rehearing and Joinder of 360 Communication and Verizon as Parties and Motion to Correct Official Transcript.

ORDER ON MOTIONS FOR RECONSIDERATION AND FOR CORRECTION OF TRANSCRIPT

APPEARANCES: Marilyn Saulnier

64 Willard Street, Apt. 209

Quincy, Massachusetts 02169

Complainant

Christopher D. Moore, Esq.

Sprint Communications Company, LP

401 9th Street, N.W., Suite 400

Washington, D.C. 20002

Respondent

I. PROCEDURAL HISTORY

On January 18, 2001, the Department of Telecommunications and Energy ("Department") issued an

Order finding that Marilyn Saulnier's ("Complainant") long distance telephone service provider was switched to Sprint Communications Company, LP ("Sprint" or "Company") without authorization in violation of G.L. c. 93, § 109(a) and (b)(1).[(1)] Marilyn Saulnier v. Sprint Communications LP, D.T.E. 00-22-12 (2001). Among other directives, the Department ordered Sprint to remit a civil penalty of $1,000 to the Department within ten (10) days of receipt of the Order.

On January 24, 2001 Sprint filed a Motion for Reconsideration of the Order ("First Motion"). On January 26, 2001 Sprint filed a Motion to Correct the Official Transcript ("Second Motion") pursuant to 220 C.M.R. § 1.06(b).

II. MOTIONS

- First Motion

Sprint argues that its Motion for Reconsideration should be granted based upon new evidence and its belief that the Department erred when it found that Sprint switched the Complainant's telephone service. In its First Motion, Sprint argues that new evidence establishes that the Complainant's long distance service was switched to Sprint as a result of a request from a Sprint reseller (First Motion at 3). Sprint contends that this information was not available to them at the time of the hearing (id.).

In support of its First Motion, Sprint seeks to introduce the affidavit of Lola Pratt, an employee of Sprint, who is responsible for the Company's long distance order processing (id. at 4). Sprint contends that, given the short duration between the date that the Department issued its Notice of Hearing in this case (December 11, 2000) and the hearing date

(January 3, 2001), it was difficult to prepare an adequate defense of Ms. Saulnier's complaint (id. at 5).

Sprint also argues that the Department, through mistake or inadvertence, failed to properly consider relevant evidence (id. at 6). Specifically, Sprint contends that the Department erred when it found that Sprint did not produce a Letter of Agency ("LOA") or Third Party Verification ("TPV") recording pursuant to

G.L. c. 93 § 109 et seq. (id.). Sprint argues that, since it did not request the change in Ms. Saulnier's service, Sprint could not have supplied a TPV recording or LOA (id. at 7).

Sprint further contends that the Department erred in failing to properly consider an internal memo presented by Sprint at the hearing simply because there was no Sprint witness to authenticate the document or to cross examine on the content of the information (id. at 8). Sprint argues that it is unreasonable to expect Sprint to present a witness for every piece of evidence it desires to present in a consumer complaint case, particularly because the employees responsible for these documents have to travel a great distance at great expense to testify (id.). Sprint asserts that the letter and computer screen printout exhibits that made up its entire case ought to have been adjudged adequate by the Department to raise a doubt regarding the alleged slam or, at a minimum, to justify requiring the local exchange company and the Sprint reseller to become parties to this proceeding (id. at 9). Sprint cites 220 C.M.R. § 1.10 for the proposition that the Department shall follow rules of evidence observed by courts when practicable; however, in this case Sprint contends that, given the expense involved, presentation of a witness was not practicable (id.). Sprint also states that the Department allowed Verizon to file a "Final Position Statement" in lieu of pre-filed testimony in an arbitration proceeding between Sprint and Verizon, thereby supporting its contention that a witness is not required in every instance to establish evidence (id.).[(2)]

- Second Motion

Sprint's Second Motion moves to correct page 44, line 21 of the official transcript in this proceeding from "I accept your denial [of motion]" to "I except to your denial [of motion]" (Second Motion at 1).

III. STANDARDS OF REVIEW

A. Reconsideration

220 C.M.R. § 1.11(10), authorizes a party to file a motion for reconsideration within twenty days of service of a final Department Order. The Department's policy on reconsideration is well settled. Reconsideration of previously decided issues is granted only when extraordinary circumstances dictate that we take a fresh look at the record for the express purpose of substantively modifying a decision reached after review and deliberation. North Attleboro Gas Company, D.P.U. 94-130-B at 2 (1995); Boston Edison Company, D.P.U. 90-270-A at 2-3 (1991); Western Massachusetts Electric Company, D.P.U. 558-A at 2 (1987).

A motion for reconsideration should bring to light previously unknown or undisclosed facts that would have a significant impact upon the decision already rendered. It should not attempt to reargue issues considered and decided in the main case. Commonwealth Electric Company, D.P.U. 92-3C-1A at 3-6 (1995); Boston Edison Company, D.P.U. 90-270-A at 3 (1991); Boston Edison Company, D.P.U. 1350-A at 4 (1983). The Department has denied reconsideration when the request rests on an issue or updated information presented for the first time in the motion for reconsideration. Western Massachusetts Electric Company, D.P.U. 85-270-C at 18-20 (1987); but see Western Massachusetts Electric Company, D.P.U. 86-280-A at 16-18 (1987). Alternatively, a motion for reconsideration may be based on the argument that the Department's treatment of an issue was the result of mistake or inadvertence. Massachusetts Electric Company, D.P.U. 90-261-B at 7 (1991); New England Telephone and Telegraph Company, D.P.U. 86-33-J at 2 (1989); Boston Edison Company, D.P.U. 1350-A at 5 (1983).

- Transcript Corrections

220 C.M.R. § 1.06(7)(b) states that transcripts may be corrected to ensure that the transcript conforms to the evidence presented at the hearing. Corrections to the transcript agreed to by the parties may be made at the direction of the presiding officer not more than ten days from the date of receipt of the transcript.

IV. ANALYSIS AND FINDINGS

A. First Motion

The Department has reviewed Sprint's request for reconsideration. Sprint's argument that evidence purporting to establish that the switch in Complainant's telephone service was unavailable at the hearing is not persuasive. In fact, the Company attempted to introduce this information at the hearing without any witness able to corroborate the note or answer any questions by the Complainant or the Department. Hence, the "evidence" that a Sprint reseller is responsible for the unauthorized switch in Ms. Saulnier's telephone service is not "new".

Moreover, at the hearing the Hearing Officer asked the parties whether they wished to submit any further information (Tr. at 47). The Company did not indicate its intent to continue preparation of its case or allude to the possibility of submitting late-filed documents id.).

The Department has also considered Sprint's contention that the Department, through mistake, error or inadvertence, failed to consider Sprint's evidence. In fact, the Department did consider this evidence, while at the same time noting its concern about the lack of any corroborating witness being offered by Sprint to allow for questions or cross examination by either the Department or the Complainant.

The fundamental tenets of due process require a witness to attest to the credibility and veracity of the Company's sole defense evidence. The Company elected to present no testimony concerning its defense. In the absence of a witness, the Department was left to interpret the abbreviated content of the Company's presentation and to judge what may or may not have precipitated the switch of Complainant's long distance carrier by Sprint. On the other hand, the Department was entitled to credit the Complainant's unequivocal denial under oath that she authorized the switch of her long distance carrier; and the Company's inability to provide a TPV recording or LOA to refute the Complainant's denial left the Complainant's denial without effective challenge or refutation. There was substantial evidence of record to support a Department finding that Sprint was not in compliance with the requirements of G.L. c. 93, § 109 (a) and (b)(1).[(3)]

Finally, the Department notes that the Company appears to have lost sight of the fact that it has a statutory responsibility to produce an LOA or TPV to support any switch of a customer's long distance service. At the hearing, the Company admitted that it effected the switch without the statutorily-required documentation. Company attempts to cast responsibility for the unauthorized switch on a third party are insufficient to relieve Sprint of its responsibility under G.L. c. 93, § 109 (a) and (b) to assure that a switch of telephone service is authorized.

For the reasons stated, the Department finds that Sprint fails to demonstrate any mistake, error or inadvertence related to the Department's original analysis in determining that Ms. Saulnier's long distance service was switched without authorization. Sprint failed to set forth any previously unknown or undisclosed facts to warrant the relief requested. Finally, the Department finds that Sprint has failed to demonstrate any extraordinary circumstances that would require substantively reconsidering its Order or reopening the hearing with joinder of new parties. Therefore, Sprint's Motion for Reconsideration, or, in the alternative Request for Rehearing with Joinder of 360 Communication and Verizon as parties, is hereby denied.

- Second Motion

The Department denies Sprint's Second Motion to correct the record at page 44, line 21, for lack of timeliness. The Second Motion was dated January 26, 2001. The official transcript of this proceeding was made available to the Department and the parties on an expedited basis on January 5, 2001. The ten-day rule has the protective effect of forcing movants seeking transcript correction to seek relief while the recollection of the hearing officer, the parties and their witnesses, and the court stenographer are fresh or at least refreshable. The movant gives no basis for departing from the rule here. Since the Second Motion was not received within the 10-day period specified by 220 C.M.R. 1.06(7)(b), it is denied.

V. ORDER

Accordingly, after due consideration, it is hereby

ORDERED: That the Motion of Sprint Communications Company, L.P. for Reconsideration or, in the Alternative, to Grant a Rehearing and Join 360 Communication and Verizon as Indispensable Parties, be and hereby is denied; and it is

FURTHER ORDERED: That the Motion of Sprint Communication Company, L.P. to Correct Official Transcript, be and hereby is denied.

By Order of the Department,

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James Connelly, Chairman

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W. Robert Keating, Commissioner

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Paul B. Vasington, Commissioner

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Eugene J. Sullivan, Jr., Commissioner

Appeal as to matters of law from any final decision, order or ruling of the Commission may be taken to the Supreme Judicial Court by an aggrieved party in interest by the filing of a written petition praying that the Order of the Commission be modified or set aside in whole or in part.

Such petition for appeal shall be filed with the Secretary of the Commission within twenty days after the date of service of the decision, order or ruling of the Commission, or within such further time as the Commission may allow upon request filed prior to the expiration of twenty days after the date of service of said decision, order or ruling. Within ten days after such petition has been filed, the appealing party shall enter the appeal in the Supreme Judicial Court sitting in Suffolk County by filing a copy thereof with the Clerk of said Court. (Sec. 5, Chapter 25, G.L. Ter. Ed., as most recently amended by Chapter 485 of the Acts of 1971).

1. § §

2. - -

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